

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Amendment to the Commission's  
Regulatory Policies Governing  
Domestic Fixed Satellites and  
Separate International Satellite  
Systems

IB Docket No. 95-41

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COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND  
TRANSPORTATION OF THE UNITED STATES OF MEXICO

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## **TABLE OF CONTENTS**

	<u>Page</u>
SUMMARY .....	i
INTRODUCTION .....	2
STATEMENT OF INTEREST .....	3
DISCUSSION .....	5
I.    THE COMMISSION SHOULD CONSIDER THE INTERACTION OF THE NPRM WITH MEXICO'S NEW TELECOMMUNICATIONS LAW.....	5
A. Mexico's Telecommunications Law Encourages Competition .....	5
B. The NPRM Should Give Greater Consideration To Issues Of Reciprocity .....	6
II.   THE NPRM RAISES ISSUES WHICH SHOULD BE NEGOTIATED BETWEEN THE U.S. AND MEXICAN GOVERNMENTS .....	8
A. Distribution Of Satellite Orbital Positions Should Be Renegotiated To Allow For Growth Of Mexico's Satellite Industry .....	9
B. The FCC Should Establish Safeguards Concerning Unauthorized Transmission Into Mexico Before Implementing Any NPRM Proposals .....	11
CONCLUSION .....	15

## **SUMMARY**

Mexico's Secretary of Communications and Transportation ("SCT") agrees with many of the goals of the Federal Communications Commission's ("FCC" or "Commission") April 25, 1995 NPRM concerning changes in satellite policies. Mexico recently passed a new Federal Law of Telecommunications which, like the NPRM, seeks to increase competition for the satellite industry. However, SCT is concerned that interaction of some of the NPRM's proposals with requirements of the Mexican Telecommunications Law could adversely affect development of the U.S. and Mexican satellite industries. Accordingly, SCT encourages the Commission to modify the NPRM's proposals.

The interaction of the NPRM and the new Mexican Telecommunications Law raises several issues which may require further bilateral negotiation. For example, the Telecommunications Law permits foreign satellite operators to serve Mexican territory only if they have obtained proper authorization in the form of a concession from the Mexican government. Concessions involving foreign satellites may be granted by law only if the country from which the satellite comes treats Mexican satellites reciprocally. U.S. regulation of foreign satellites does not adequately consider such needs for reciprocity.

Second, current distribution of satellite orbital positions pursuant to international agreement provides the U.S. with such a significant advantage (the U.S. has 35 orbital slots for domsats to Mexico's three) that easing restrictions on international transmissions by U.S. domsats may retard opportunities for growth of the Mexican satellite industry. Accordingly, redistribution of these orbital positions may also be appropriate in light of the NPRM's proposals.

Finally, SCT is concerned that adoption of the NPRM's proposals may encourage unauthorized U.S. satellite transmission into Mexico. SCT suggests that the FCC create a procedure for conditioning satellite licenses on receipt of required foreign authorizations.

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**COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND  
TRANSPORTATION OF THE UNITED STATES OF MEXICO**

Pursuant to Section 1.415 of the Commission's Rules, the Secretary of Communications and Transportation of the United States of Mexico ("SCT") hereby submits the following comments concerning the Notice of Proposed Rulemaking released by the Commission on April 25, 1995.<sup>1</sup> Among other things, this NPRM proposes to allow all licensed satellites of the United States of America ("U.S.") to provide both domestic and international communications, increasing the opportunity for U.S. domestic satellites ("domsats") to transmit into Mexico.

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<sup>1</sup> 47 C.F.R. § 1.415; Notice of Proposed Rulemaking, IB Docket No. 95-41, Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems (the "NPRM"), April 25, 1995.

## INTRODUCTION

In general, SCT supports the NPRM's goal of increasing competition in satellite services and increasing the amount of satellite capacity available.<sup>2</sup> Mexico recently adopted a new Federal Law of Telecommunications ("Telecommunications Law") that encourages competition in provision of telecommunications service and provides opportunities for foreign partners to participate in more open telecommunications markets, including those for satellite services. In light of dramatic increases in commerce between the U.S. and Mexico, SCT believes that continued cooperation such as that anticipated by the Telecommunications Law is essential to ensure continued growth in both countries' telecommunications services.

Despite certain shared goals, SCT is concerned that the NPRM's proposals do not reflect sufficient attention to the need for reciprocity with U.S. neighbors, such as Mexico, and that the proposals could interfere with growth in the Mexican satellite industry. SCT notes that Mexico's new Telecommunications Law requires reciprocity in the treatment of Mexican satellites before foreign satellites can provide services in Mexican territory.

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2 NPRM, ¶1.

Existing international agreements provide the United States with some 35 orbital positions for domsats while Mexico has only three. Given this imbalance, the NPRM's proposal to eliminate all restrictions on U.S. domsats (permitting them to freely transmit into Mexico and other nations), may retard Mexico's own satellite opportunities. In light of these potential problems, SCT encourages the Commission to consider further negotiations with Mexico concerning satellite opportunities before the Commission eliminates its restrictions on domsats providing international service.

#### **STATEMENT OF INTEREST**

The Secretary of Communications and Transportation, a Cabinet-level minister of the Mexican administration, has jurisdiction over the development and implementation of telecommunications policies and regulations in Mexico, including satellite regulation. SCT also defines the terms and conditions under which foreign-affiliated entities may offer domestic telecommunications services within Mexico and international services to or from Mexico. In these roles, SCT has been involved in international authorization and coordination of satellite services since 1967, when Mexico joined Intelsat.

Article 7 of the new Mexican Telecommunications Law enumerates SCT's telecommunications responsibilities.<sup>3</sup>

These responsibilities include, among others:

(1) formulating Mexican telecommunications policy,  
(2) promoting interconnection of telecommunications equipment and networks, (3) interpreting the Telecommunications Law and issuing necessary implementing rules, (4) obtaining and coordinating satellite orbits and orbital positions, and (5) participating in negotiation of international treaties concerning telecommunications.<sup>4</sup> SCT carries out these responsibilities through the Undersecretary of Communications and Technological Development. The SCT regulatory staff conducts day-to-day regulation of service providers in domestic and international telecommunications markets.

In regulating the Mexican satellite industry, SCT has jurisdiction over Telecomunicaciones de Mexico ("Telecomm"). Established by presidential decree in 1989, Telecomm is a Mexican commercial corporation which operates Mexico's three satellites -- Morelos II, Solidaridad I and Solidaridad II. Telecomm now is the only authorized

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3 Mexican Federal Law of Telecommunications ("Telecommunications Law"), Art. 7, version as passed the by legislature in May 1995.

4 Id.



provider of domestic satellite service in Mexico and provides international service on Mexico's satellites and on Intelsat or Inmarsat. The new Telecommunications Law opens the possibility that other companies may obtain concessions from the Mexican government to also provide satellite services in Mexico. Telecomm also provides domestic public telegraph, telex, facsimile, telegram and money order services. SCT has reviewed and concurs with Telecomm's separately filed comments in this proceeding.

The following comments emphasize the Mexican government's view on three issues: (1) interaction of the NPRM and the new Telecommunications Law; (2) the possibility of renegotiating distribution of satellite orbital positions in light of the NPRM; and (3) the need for FCC cooperation in assuring that U.S. satellite operators obtain the authorization required under Mexican law before launching a satellite covering Mexican territory.

## **DISCUSSION**

### **I. THE COMMISSION SHOULD CONSIDER THE INTERACTION OF THE NPRM WITH MEXICO'S NEW TELECOMMUNICATIONS LAW**

#### **A. Mexico's Telecommunications Law Encourages Competition**

In May of this year, Mexico adopted a comprehensive Telecommunications Law that significantly advanced the development of the country's telecommunications policy.

Since 1990, Mexico has been in transition from a government-owned and operated telecommunications monopoly to an open and competitive industry in all markets.<sup>5</sup> The Telecommunications Law encourages competition in all sectors of the telecommunications industry. It also permits companies with significant foreign investment to apply for concessions to operate telecommunications ventures, so long as they do so in conjunction with a Mexican business which retains a 51 percent or greater share of the business.<sup>6</sup> Accordingly, the Mexican Telecommunications Law goes a long way toward meeting the shared Mexican-U.S. goal of encouraging free and open competition in telecommunications.

**B. The NPRM Should Give Greater Consideration To Issues Of Reciprocity**

With respect to the satellite industry, the Telecommunications Law requires that all satellite operators obtain authorization in the form of a concession through a lawfully organized, majority Mexican owned company before allowing service in Mexican territory.<sup>7</sup> Article 30 of the Telecommunications Law provides that non-Mexican satellite

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<sup>5</sup> This transition began with the privatization of Telefonos de Mexico ("Telmex") in 1990 and will culminate in the opening of the local, long distance, and international services markets to competition in 1997.

<sup>6</sup> Telecommunications Law, ch. III, arts. 11-12.

<sup>7</sup> Id., arts. 11(iii), 29 and 30.

systems can receive concessions only under certain conditions.<sup>8</sup> Specifically, Article 30 provides that a concession involving a foreign satellite system can be granted only if the Secretary has entered into treaties with the country from which the satellite is licensed which contemplate reciprocity for Mexican satellites.<sup>9</sup>

Because reciprocity in treatment of satellites is a prerequisite to granting of a concession to a satellite affiliated with a foreign country under the Mexican Telecommunications Law, the NPRM should also consider the issue of reciprocity. Because the NPRM eliminates restrictions on U.S. domsats serving international points, including Mexico, without providing a similar increase in opportunities for Mexican satellites to serve the U.S. market, it may be difficult for SCT to find that reciprocity exists when it evaluates requests for concessions from applicants affiliated with U.S. entities. Bilateral negotiations may be appropriate to discuss what form of reciprocity is required under the Mexican law.

In sum, the majority of the NPRM's proposals increase competition and openness in the satellite industry in a way that is compatible with the Mexican

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8 Id., art. 30.

9 Id.

Telecommunications Law. Because of requirements under the Mexican law concerning reciprocity in satellite regulation, however, SCT recommends that the Commission modify the NPRM's proposal so as to provide reciprocal opportunities for foreign satellite companies to serve the U.S. domestic market.

**II. THE NPRM RAISES ISSUES THAT SHOULD BE  
NEGOTIATED BETWEEN THE U.S. AND MEXICAN  
GOVERNMENTS**

The NPRM specifically requests comment on other issues raised by its proposal, including "the need to reopen coordination with satellite systems from other countries, and whether any special requirements should be placed on satellite operators providing both domestic and international service."<sup>10</sup> Because the NPRM may have the impact of restricting opportunities for growth of the Mexican satellite industry and encouraging unauthorized transmission by U.S. satellites into Mexico, SCT believes the following issues should be resolved in negotiation between the U.S. and Mexican governments.

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<sup>10</sup> NPRM, ¶40.

**A. Distribution of Satellite Orbital  
Positions Should Be Renegotiated To  
Allow For Growth Of Mexico's  
Satellite Industry**

As an initial matter, some background is necessary to appreciate how the NPRM's proposal may impact the growth and future needs of Mexico's satellite industry. Mexico's satellite industry is younger than that of the United States, but it has grown rapidly. From 1988 to 1994, Mexico experienced an average annual growth of 12 percent in the use of its C band satellite transponders and an average annual growth of 33.3% in the use of its Ku band transponders. In the 1980s, Mexico had to lease capacity from U.S. satellites and Intelsat to meet its satellite needs. But the launch of Mexico's third satellite Solidaridad II in October 1994 brought Mexico's satellite industry into the world's vanguard and satisfied current needs.<sup>11</sup> Growth at the current pace is predicted to continue, and Mexico estimates that it will require from two to five additional satellites over the next 10 to 15 years.

In 1982, the United States, Mexico and Canada negotiated a Trilateral Arrangement concerning orbital

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<sup>11</sup> The Solidaridad satellites transmit and receive on the L, C and Ku bands in Mexico, the Caribbean, South and Central America and parts of the United States. Solidaridad II reaches parts of the southern and Eastern United States. The other satellites have minimal transmission to border areas of the United States.

positions for each country's satellite systems. This arrangement allotted Mexico two orbital positions for the Morelos I and II satellites. Although that arrangement was updated in 1988, today Mexico still has only three orbital slots -- one for the Morelos II satellite, which continues in operation, and one for each of its newer Solidaridad satellites.<sup>12</sup> On the other hand, Canada has four orbital positions and the United States has some 35 orbital slots for domsats.

This distribution of satellite orbital positions does not allow for the projected growth of the Mexican satellite industry and places Mexico at an extreme competitive disadvantage vis-a-vis the U.S. For example, Mexico has no satellite orbital positions to meet the anticipated growth in current usage. Furthermore, the lack of satellite orbital slots limits Mexico's ability to meet new service opportunities. Finally, at the time the distribution of orbital positions was negotiated, the parties believed that some U.S. satellites would continue to serve only the U.S. domestic market. The NPRM, however, would allow all 35 of the U.S. orbital positions to be used by domsats providing international service. Viewed in this

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<sup>12</sup> Coordination has just been completed for a fourth orbital position at 138° for Ku band service only.

light, Mexico's three satellite orbital positions are even less sufficient.

In order to more adequately acknowledge the requirements of the U.S. neighbors, SCT believes that it is appropriate to reopen negotiations on the number of orbital slots allocated to Mexico (and Canada) under the 1988 Trilateral Arrangement.<sup>13</sup>

**B. The FCC Should Establish Safeguards Concerning Unauthorized Transmission Into Mexico Before Implementing Any NPRM Proposals**

The FCC's existing Transborder Policy places the burden on U.S. domsats to demonstrate "exceptional circumstances" before they can provide international service. While those requirements have been relaxed somewhat, the NPRM's proposal to eliminate all requirements that U.S. domsats justify their provision of international service may have the unintended effect of encouraging unauthorized satellite transmission into Mexico.

The Transborder Policy recognizes that "[t]he possibility must be observed that certain types of service may be of concern in the minds of neighboring governments. Their concurrence in all instances, therefore, should not be

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<sup>13</sup> Mexico, Canada and the U.S.A. all have applied to the International Treaty Union ("ITU") for additional orbital positions.

assumed."<sup>14</sup> SCT believes that systems to ensure compliance with laws of foreign governments prior to launch of a satellite should be strengthened, not weakened.

Unfortunately, the NPRM moves in the opposite direction. By eliminating any requirement that domsats justify their international service, the NPRM's proposals leave the FCC without any process for verifying that domsats providing international service are, in fact, receiving the required authorization from foreign governments before transmitting into their territory.

The NPRM gives passing mention to the objective that domsat provision of international services should remain "subject to the approval of the affected foreign country and successful consultation with Intelsat and ITU coordination with other administrations with satellite systems that may be affected."<sup>15</sup> Without requiring that the domsats make any prior showing, however, it will be difficult to enforce this condition. Accordingly, SCT believes the FCC should condition the grant of satellite licenses on the licensee obtaining required authorizations

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<sup>14</sup> See Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to FCC Chairman Mark Fowler (July 23, 1981) ("Buckley Letter") (Printed in Appendix to Transborder Satellite Video Services, 88 F.C.C.2d 258, 288 (1981)).

<sup>15</sup> NPRM, ¶18.



from foreign jurisdictions before launch. In addition, the FCC should establish a process for entertaining complaints about unauthorized satellite transmission and establish sanctions, including termination of the licenses, for failure to obtain the necessary authorizations.

Failure of the Commission to maintain any prior approval over international activity by domsats is of special concern to SCT because unauthorized transmission by U.S. satellite operators into Mexico is already a problem. Mexico experiences significant "spill over" of signals from satellites licensed only to transmit within the United States. Signals of almost all U.S. satellites can be received with small satellite dishes in Mexico, some of which are specifically being manufactured to pick up signals from U.S. domsats.<sup>16</sup> More than a million television receive only ("TVRO") dishes in Mexico are oriented to U.S. satellites. Mexico also has found that some companies illegally offer direct-to-home ("DTH") service in Mexico.

SCT believes that the FCC should address these concerns by requiring U.S. satellites in orbital positions oriented toward Mexico to present their authorizations from

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<sup>16</sup> See "Mexico regulates its own future satellites," United Press International, Dec. 27, 1984 (available on NEXIS).

the Mexican government to the FCC prior to launch.<sup>17</sup> The Mexican government is also willing to entertain bilateral negotiations to ensure that the requirement of authorization from Mexico does not unduly delay licensing of U.S. satellites.<sup>18</sup>

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17 Suggestion of such safeguards is responsive to the NPRM's request for comment on "whether any special requirements should be placed on satellite operators providing both domestic and international service." NPRM, ¶40.

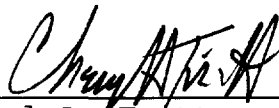
18 With respect to the many satellites whose footprint includes the U.S. and Mexico, a prior requirement that the satellite operator receive authorization from Mexico should not cause undue delay in licensing. The Mexican Telecommunications Law requires that applications for concessions must be decided within 180 calendar days of filing of the application. See Telecommunications Law, art. 19.

### CONCLUSION

For all of the above-stated reasons, SCT submits that the Commission should revise the proposal outlined in its NPRM which would allow domsats to transmit internationally and further, that the Commission should initiate further negotiations with Mexico on the issues identified.

Respectfully submitted,

SECRETARY OF COMMUNICATIONS  
AND TRANSPORTATION OF MEXICO



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June 8, 1995

## **CERTIFICATE OF SERVICE**

I, Eric N. Richardson, an attorney in the law firm of Morrison & Foerster, do hereby certify that copies of the foregoing COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND TRANSPORTATION OF MEXICO were hand delivered on this 8th day of June, 1995 to the following:

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